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January 25, 1983

Dr. George C. Cilley
State Veterinarian
Division of Animal Industry
Department of Agriculture
85 Manchester Street
Concord, NH 03301

Dear Dr. Cilley:

You recently requested an opinion concerning the proper means for implementation of the Governor's Management Review Team's recommendations for the Division of Animal Industry. Specifically, you asked whether the Division could promulgate regulations imposing a \$5.00 fee for the preparation of health certificates for interstate shipments of livestock and poultry. Our conclusion is that the Division does not have authority to charge such a fee.

It is a well established rule of law that a State agency may not exercise its rulemaking authority to expand, contract or in any way modify statutory law. Kimball v. New Hampshire Board of Accountancy, 118 N.H. 567 (1978). The Division of Animal Industry, Department of Agriculture currently has no statutory authority to charge a fee for the issuance of interstate health certificates. In the absence of such statutory authority the Division is prescribed from establishing such a fee through the rulemaking process.

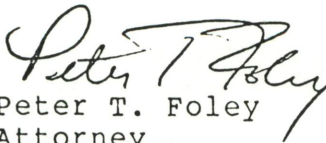
Accordingly, it will be necessary for the legislature to enact legislation empowering the Division to charge such a fee. I would be happy to assist you or your staff in the drafting of an appropriate amendment to RSA 443.



January 25, 1983
Dr. George C. Cilley
Page 2

I trust this is responsive to your inquiry. Feel free to contact me at your convenience if you wish to discuss this matter further.

Very truly yours,


Peter T. Foley
Attorney
Division of Legal Counsel

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